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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6875 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
 MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MEGHDOOT LAMINARAT PVT LTD.

Versus

UNION OF INDIA

Appearance:

MR PARESH M DAVE for Petitioners

CORAM : MR.JUSTICE C.K.THAKKER and

MR.JUSTICE A.M.KAPADIA

Date of decision: 27/08/98

ORAL JUDGEMENT

#. Rule. Mr. Jayant Patel, learned counsel appears and waives service of rule on behalf of the respondents. In the facts and circumstances of the case, matter is taken for final hearing.

#. This petition is filed against in action on the part of the Commissioner of Central Excise (Appeals), Ahmedabad respondent No.2 herein, in not deciding Stay Application filed by the petitioners. It is stated in the petition that the Assistant Commissioner, Central Excise Division VI, Ahmedabad respondent No.3 herein, passed an order against them. Being aggrieved by said order, petitioners preferred an appeal as well as an application for stay. The grievance of the petitioners is that neither an appeal is heard and disposed of nor any order was made on an application for stay. Mean while, the Department has started proceedings for coercive recovery of the dues against the petitioners, in respect of which, the grievance is made by the petitioners and appeal as well as an application for stay are pending.

#. It was contended by Mr.Dave, learned counsel for the petitioners that during the pendency of stay application, no coercive recovery can be effected by the authorities. He has placed reliance on a decision of the Division Bench of this Court in DCW Ltd. Vs. Commissioner (Appeals) & Others 1997(2) GLR 913. In almost similar circumstances, this Court directed the authorities not to effect coercive recovery till application for stay is disposed of by the appellate authority. Consequential direction was issued to the appellate authority to dispose of stay application within stipulated period. The law laid down in DCW Ltd. Vs. Commissioner (Appeals) & Others was reiterated in other several cases (S.C.A. No.4684 of 1998, the matter between Kilburn Engineering Ltd Vs. Union of India decided on June 19,1998).

#. In the facts and circumstances of the case, we direct the appellate authority - the respondent No.2 herein to consider stay application of the petitioners

and pass appropriate order preferably within six weeks from the date of receipt of the writ. Till an application for stay is disposed of, the authority shall not take further step to recover the amount payable by the petitioners under the impugned order.

#. S.C.A. stands disposed of accordingly. Rule is made absolute to the above stated extent. In the facts and circumstances of the case, there shall be no order as to costs.

(C.K.Thakkar,J.)

Date : 27-8-1998 (A.M.Kapadia,J.)

(KPP)